IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

TUESDAY, THE 16TH OCTOBER 2007 / 24TH ASWINA 1929

Crl.Rev.Pet.No. 3331 of 2007(B)

CRA.750/2005 of ADDL. SESSIONS COURT-II, MAVELIKKARA
MC.NO.34/2005SC.377/2005 of ASSISTANT SESSIONS COURT, MAVELIKKARA

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REVN. PETITIONERS: APPELLANTS/ACCUSED

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1. SANKARAN, AGED 46 YEARS,
   KODANVILAYIL, PAYYANALLUR MURI,
   PALAMEL VILLAGE, NOORANAD.

2. GANGADARAN, AGED 30 YEARS,
   KALABHAVANAM,PAYYANALLUR MURI,
   PALAMEL VILLAGE, NOORANAD.

BY ADV. SRI.RASHEED C.NOORANAD

RESPONDENTS: COMPLAINANT/AND STATE

STATE OF KERALA REP.BY
PUBLIC PROSECUTOR,HIGH COURT OF KERALA
ERNAKULAM.

BY ADV. SRI. K.S. SIVAKUMAR, PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 16/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR , J

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CRL. R.P. NO. 3331 OF 2007

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Dated this the 16th day of October, 2007.

ORDER

The revision petitioners were the sureties to accused Nos.1 and 2 in Crime No. 123/2002 of Mavelikkara Excise Range for offences punishable under Sections 8(1)(2) and 55 (a) of the Abkari Act. Both the accused persons were enlarged on bail during crime stage each of them on executing a bond for Rs.50,000/- with two solvent sureties each for the like sum. It was on 11.10.2002 that the petitioners became sureties for the accused. Subsequently, Judicial First Class Magistrate, Mavelikkara took cognizance of the offences and registered the case as CP 93/2004. While the 2nd accused appeared before the committal court, the 1st accused did not appear before the committal court. Subsequently, as per order dated 15.02.2005, the committal court committed A2 alone to the Court of Session. Since A1 was absent, the case against him was re-filed as CP No. 9/2005. The case against A2 was numbered as S.C.377/2005

before the Sessions Court, Alappuzha and was made over to the Assistant Sessions Court, Mavelikkara. For the reason that the 1st accused was absent before the Assistant Sessions Court, proceedings were initiated against the revision petitioners, the sureties under Section 466 Cr.P.C. Subsequently as per order dated 15.10.2005, the Assistant Sessions Court directed each of the revision petitioners to pay the entire bond amount of Rs.50,000/- as penalty and also ordered that if the penalty amount was irrecoverable, they should suffer imprisonment in Civil Prison for three months each. An appeal preferred by the revision petitioner before the Additional Sessions Court-II, Mavelikkara as Crl. Appeal No. 750/2005 was dismissed confirming the order passed by the trial court. Hence, this revision.

2. I heard the learned counsel for the revision petitioner as well as the learned Public Prosecutor.

3. Admittedly, the 1st accused in the case has been absconding when the matter was pending before the committal court and he did not appear before the committal court which is

the reason why the case against him was re-filed. The case which was committed to the Court of Session was only with regard to the 2nd accused who alone appeared before the committal court as well as the Assistant Sessions Court. While it was permissible to the committal court to proceed against the sureties of the 1st accused for his absence before that court, the Assistant Sessions Court could not have initiated proceedings against the sureties of the 1st accused merely for the reason that the 1st accused was absent before that court. When the 2nd accused in the crime is the solitary accused in S.C. No. 377/2005 before the Assistant Sessions Court, there is no question of that court treating the 1st accused absent. That court also cannot be treated as the court to which the case has been subsequently transferred within the meaning of Section 446 (1) Cr.P.C. The case which has been committed to the Sessions Court is only the case involving the 2nd accused alone. The case against the absconding 1st accused is still before the committal court and stand transferred to the Long Pending Register. Hence, while it is open to the committal court to initiate proceedings against the

sureties of the absconding 1st accused, the proceedings initiated by the Assistant Sessions Court against the sureties of the 1st accused cannot be justified in law. Accordingly, the order dated 15.10.2005 passed by the Assistant Sessions Court, Mavelikkara in M.C. No. 34/2005 in SC No. 377/2005 as well as the judgment dated 08.06.2007 in Crl.Appeal No. 750/2005 before the Additional Sessions Court, Mavelikkara are set aside. The proceedings initiated against the revision petitioners by the Assistant Sessions Court will stand dropped.

The Crl.R.P is disposed of as above.

V. RAMKUMAR, JUDGE.

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